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MGM Resorts International,
CityCenter Land, LLC, Mirage Resorts, Inc.,
Mandalay Corp., and Mandalay Resort Group

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MGM RESORTS INTERNATIONAL, a
Delaware corporation; CITYCENTER LAND,
LLC, a Nevada limited liability company;
MIRAGE RESORTS, INC., a Nevada
corporation; MANDALAY CORP., a Nevada
corporation; and MANDALAY RESORT
GROUP, a Nevada corporation,

Plaintiffs,

vs.

PACIFIC PILLOWS, LLC, a Colorado limited
liability company,

Defendant.

Case No. 2:13-cv-001404

COMPLAINT

(JURY DEMAND)

For their Complaint, Plaintiffs MGM Resorts International, CityCenter Land, LLC, Mirage Resorts, Inc., Mandalay Corp., and Mandalay Resort Group (hereinafter collectively “Plaintiffs”), allege the following.

NATURE OF THE CASE

Plaintiff MGM Resorts International (“MGM”) owns and operates, through its subsidiaries

and affiliates, several world famous resort hotel casinos in Las Vegas, Nevada, including, among others, Aria, Bellagio, Mandalay Bay, MGM Grand, and The Mirage, and has acquired trademark rights in the ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE marks for use with a variety of goods and services, including, among others, hotel services, mattresses, pillows, pillow cases, bed linens, sheets, duvet covers, quilts, and blankets. Defendant Pacific Pillows, LLC (“Defendant”) is using Plaintiffs’ ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE marks to sell pillows in violation of Plaintiffs’ trademark rights. Accordingly, Plaintiffs assert claims for: (1) trademark counterfeiting pursuant to 15 U.S.C. § 1114(a); (2) trademark infringement pursuant to 15 U.S.C. § 1114(a); (3) unfair competition pursuant to 15 U.S.C. § 1125(a)(1); (4) false advertising pursuant to 15 U.S.C. § 1125(a)(2); (5) common law trademark infringement; and (6) common law unfair competition.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338(a), because Plaintiffs’ claims arise under the laws of the United States, specifically, under the Lanham Act, 15 U.S.C. §§ 1114 and 1125. This Court also has subject matter jurisdiction over Plaintiffs’ common law claim for unfair competition pursuant to 28 U.S.C. § 1338(b), because that claim is joined with substantial and related claims arising under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* In addition, this Court has supplemental jurisdiction over Plaintiffs’ common law claims for trademark infringement and unfair competition, pursuant to 28 U.S.C. § 1367(a), because these claims are closely related to Plaintiffs’ federal claims.

2. This Court has personal jurisdiction over Defendant because Defendant has purposefully availed itself of the privilege of conducting activities in this judicial district and exercising personal jurisdiction over Defendant would be reasonable. Defendant’s contacts with this judicial district have been continuous and systematic, approximating a physical presence. In addition or alternatively, Defendant has purposefully directed its tortious conduct alleged below at Plaintiffs in this judicial district knowing that Plaintiffs are located in this judicial district. Defendant has done so by, among other things, operating a highly interactive website located at <www.pacificpillows.com> through which Defendant advertises, promotes and sells its products

1 using Plaintiffs' trademarks to residents of this judicial district and Defendant ships and has
2 shipped its infringing products into this judicial district.

3 3. Venue is proper in the United States District Court for the District of Nevada under
4 28 U.S.C. § 1391(b), (c), and/or (d). Venue is proper in the unofficial Southern division of this
5 Court.

6 **PARTIES**

7 4. Plaintiff MGM Resorts International (defined above as "MGM") is a Delaware
8 corporation whose principal place of business is in Las Vegas, Nevada. MGM owns, in whole or
9 in part, CityCenter Land, LLC, Mirage Resorts, Inc., Mandalay Corp., and Mandalay Resort
10 Group.

11 5. Plaintiff CityCenter Land, LLC ("CityCenter") is a Nevada limited liability
12 company whose principal place of business is in Las Vegas, Nevada. CityCenter owns and
13 operates Aria Resort and Casino in Las Vegas, Nevada.

14 6. Plaintiff Mirage Resorts, Inc. ("MRI") is a Nevada corporation whose principal
15 place of business is in Las Vegas, Nevada. MRI owns The Mirage Hotel and Casino in Las
16 Vegas, Nevada.

17 7. Plaintiff Mandalay Corp. is a Nevada corporation whose principal place of business
18 is located in Las Vegas, Nevada. Mandalay Corp. owns and operates the Mandalay Bay Hotel
19 and Casino in Las Vegas, Nevada.

20 8. Plaintiff Mandalay Resort Group ("MRG") is a Nevada corporation whose
21 principal place of business is located in Las Vegas, Nevada. MRG is the parent of Mandalay
22 Corp. and subsidiary of MGM.

23 9. Defendant Pacific Pillows, LLC (defined above as "Defendant"), is a Colorado
24 limited liability company whose principal place of business is located in Denver, Colorado.

25 **ALLEGATIONS COMMON TO ALL COUNTS**

26 10. Based upon its substantial advertising, promotion, and longstanding use in
27 interstate commerce, MGM, through its subsidiaries and affiliates, owns substantial federal and
28 common law trademark rights in the ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND,

and MIRAGE marks for use in connection with a variety of goods and services, including, among others, hotel services, mattresses, pillows, pillow cases, bed linens, sheets, duvet covers, quilts, and blankets.

11. Plaintiffs own, among many others, the following United States trademark registrations and pending applications:

Registrations

Applicant	Trademark	Registration No.	Goods/Services
CityCenter Land, LLC	ARIA	4,053,357	Beach towels
CityCenter Land, LLC	ARIA	4,222,544	Bath towels and washcloths; bed linen, namely, bed sheets, duvet covers, bed blankets, and pillow cases
CityCenter Land, LLC	ARIA	4,309,075	Pillows
Mirage Resorts, Incorporated	BELLAGIO	4,218,227	Mattresses
Mirage Resorts, Incorporated	BELLAGIO AT HOME	4,161,824	Mattresses and Pillows

Applications

Applicant	Trademark	Application No.	Goods/Services
CityCenter Land, LLC	ARIA	85/228,674	Mattresses and Pillows
Mirage Resorts, Incorporated	BELLAGIO	77/950,641	Towels and washcloths; bed linen, namely, bed sheets, duvet covers, blankets, and pillow cases
Mirage Resorts, Incorporated	BELLAGIO AT HOME	85/146,661	Bed sheets, bed blankets, duvet covers, pillow cases, and bath towels
Mandalay Corp.	MANDALAY BAY	85/633,948	Bed sheets, pillowcases, bed blankets, quilts, duvet covers; bath towels, washcloths; beach towels
MGM Resorts International	MGM GRAND	85/510,324	Bed sheets; bed blankets; duvets; towels and washcloths
MGM Resorts International	MGM GRAND	85/510,335	Pillows; Mattresses
MGM Resorts International	MGM GRAND AT HOME	85/648,533	Mattresses and Pillows
MGM Resorts International	MGM GRAND AT HOME	85/648,527	Bed sheets, bed blankets, duvet covers, pillow cases, and bath towels
Mirage Resorts Incorporated	MIRAGE AT HOME	85/634,941	Mattresses and Pillows

Mirage Resorts, Incorporated	MIRAGE AT HOME	85/634,235	Bed sheets, bed blankets, duvet covers, pillow cases, and bath towels
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(Copies of Plaintiffs' trademark registrations and applications are attached hereto as Exhibit A.)

12. In addition to the foregoing federal trademark registrations and applications, Plaintiffs have acquired common law rights in the ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE marks by virtue of their use of these marks in interstate commerce in connection with the rendering and/or sales of hotel services, mattresses, pillows, pillow cases, bed linens, sheets, duvet covers, quilts, and blankets.

13. Plaintiffs have expended millions of dollars to promote and advertise their ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE marks.

14. Based upon their statutory and common law trademark rights, Plaintiffs own the exclusive right to use the ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE trademarks in connection with hotel services, mattresses, pillows, pillow cases, bed linens, sheets, duvet covers, quilts, and blankets.

15. Plaintiffs have commenced a program to license use of certain of their marks for use on pillows and related products.

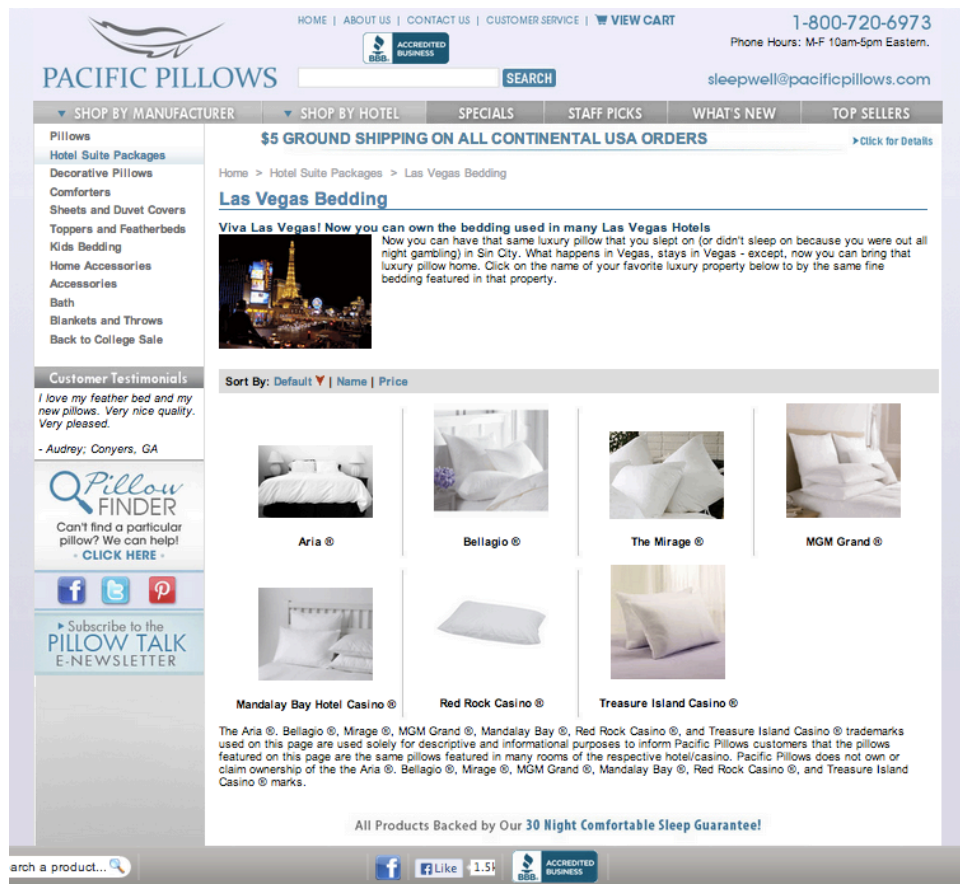
Pacific Pillows' Wrongful Conduct

16. Defendant Pacific Pillows sells pillows to consumers through its website at <www.pacificpillows.com>.

17. Defendant uses Plaintiffs' ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE marks to sell Defendant's pillows.

18. Defendant's website features a link entitled "Las Vegas Bedding." When a consumer clicks on this link, the Defendant's website displays a page prominently featuring images of Defendant's products labeled using Plaintiffs' ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE marks. A true and accurate screenshot of this page from the Defendant's website is shown below:

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(Copies of pages from the <www.pacificpillows.com> website are attached hereto as Exhibit B.)

19. Defendant's website also allows consumers to "SHOP BY HOTEL." When a consumer clicks on the "SHOP BY HOTEL" link, a drop-down list is displayed using Plaintiffs' trademarks: ARIA, BELLAGIO, MANDALAY BAY MANDALAY BAY HOTEL CASINO, MGM GRAND and THE MIRAGE.

20. When a consumer clicks on one of the trademarks either from the "Las Vegas Bedding" page or from the "SHOP BY HOTEL" menu, the consumer is directed to a page bearing Plaintiffs' corresponding trademark, several references to Plaintiffs' resort hotel and casino, and additional links that, if followed, allow consumers to purchase Defendant's pillows using a credit card.

21. For example, when a consumer clicks on the ARIA link from the "SHOP BY HOTEL" menu or from the Las Vegas Bedding page, a webpage is displayed bearing the ARIA mark and the statement: "Order the same luxurious pillows featured in many rooms at the Aria."

1 The page contains a description of Defendant's pillows, which states:

2 Aria[®] was opened late in 2009 and is a premier addition to the Las Vegas Strip.
 3 Guests are pampered and get to spend each and every night sleeping on luxury
 4 Down Etc.[®] pillows featured in most Aria[®] rooms. Aria[®] is dedicated to providing
 5 guests with great service and comfort and in their dedication they offer in most of
 6 their luxury rooms the Down Etc.[®] 75% White Goose Feather/Down Pillow along
 7 with the Down Alternative Down Etc.[®] Fairfax[®] Pillow. Since Aria[®] offers both a
 traditional down and feather pillow and a down alternative pillow made by Down
 Etc.[®] in many Aria[®] rooms, guests are sure to have the perfect pillow each and
 every night.

8 Lucky for you, you can bring the luxury of the Aria[®] into your own home by
 9 ordering either the Down Etc.[®] 75/25 Down and Feather Pillow or the Down
 10 Etc.[®] Fairfax Down Alternative Pillow from Pacific Pillows. Sleep in comfortable
 bliss. Order the same pillows featured in Aria[®] today!

11 (Emphasis added.)

12 22. At the bottom of the page, a disclaimer states the following:

13 The Aria[®] mark is owned by MGM Resorts International[®]; this mark is not owned
 14 by Pacific Pillows. The Aria[®] trademark is used on this website for informational
 15 purposes to inform Pacific Pillows customers that the Down Etc.[®] Fairfax and
 Down Etc.[®] 75/25 Down/Feather Pillows are the exact same pillows featured in
 many rooms at Aria[®]. The Down Etc.[®] Fairfax and Down Etc.[®] 75/25 Down and
 16 Feather Pillows are manufactured by Down Etc.[®]. No products featured on the
 PacificPillows.com website are manufactured by MGM Resorts International[®];
 17 however, many rooms in Aria[®] feature the Down Etc.[®] Fairfax Pillow and Down
 Etc.[®] 75/25 Feather/Down pillows sold by Pacific Pillows on this webpage.

18 (Emphasis added.)

19 23. Between the product description and the disclaimer, the page contains three images
 20 of pillows – a single pillow in one image, two pillows in the second image, and three pillows in
 21 the third image. Beneath each image is a link to a page that contains a further description of
 22 Defendant's pillows. The page states: "Sleep well night after night on the Down Etc.[®] 25% White
 23 Goose Down / 75% White Goose Feather Pillow Featured in many Aria[®] rooms." It goes on to
 24 state the following:

25 Oftentimes you go to an amazing and luxurious hotel and have the best night's
 26 sleep of your life, and then when you get home you can't find what gave you that
 27 perfect night's sleep. One of the reasons you likely got that great night of sleep
 28 was the luxurious pillows you slept on in your favorite property. The Aria[®] offers
 in many of its rooms luxurious pillows made by Down Etc.[®] The Down Etc.[®]

25% White Goose Down/ 75% White Goose Feather Pillow, found in many Aria[®] rooms, is one of the most comfortable and well-built pillows available anywhere.

The Down Etc.[®] 75/25 White Goose Down/Feather Pillow is perfect for anyone who is looking for exceptional support and comfort the whole night through. Order the Down Etc. 25% White Goose Down/ 75% White Goose Feather Pillow today and start sleeping on the same pillow featured in many Aria[®] rooms.

(Emphasis added.)

24. Beneath this language, a disclaimer states the following:

The Aria[®] trademark is owned by MGM Resorts International[®]. Pacific Pillows fully acknowledges this fact and makes no claim of ownership of the Aria[®] mark. The Aria[®] mark is used on this website simply to inform customers of Pacific Pillows that the Down Etc.[®] 75/25 White Goose Down/Feather Pillows are the same pillows featured in many rooms at Aria[®]. The Down Etc.[®] 75/25 Down and Feather Pillows are manufactured by Down Etc.[®] and not by MGM Resorts Internationalm[®] [sic]; however, many rooms in Aria[®] feature the Down Etc.[®] Fairfax Pillow and Down Etc.[®] 75/25 Feather/Down pillows offered by Pacific Pillows on the PacificPillows.com website.

(Emphasis added.)

25. Below the disclaimer, the page displays images of nine (9) separate pillow sets.

Beneath each image is a link that takes the consumer to a page containing yet another description of Defendant's pillows, which states:

The main problem with many feathers and down pillows is that while they are soft, they offer no support and your head sinks down to your bed when you lay down at night. Through its premium materials and design, the Down Etc.[®] 25% White Goose Down / 75% White Goose Feather Pillow found in many Aria[®] rooms addresses this problem superbly. The soft feel of the pillow is derived from the premium White Goose Down that makes up 25% of the pillow's fill. To offer support while still maintaining a soft sleeping environment, this Down Etc.[®] Pillow also features 75% premium White Goose Feathers. This ideal combination of premium White Goose Down and White Goose Feathers creates a superb sleeping environment that is comfortable, soft and supportive. Guests of the Aria[®] can directly attest to this fact. Order a Down Etc.[®] 25% White Goose Down/75% White Goose Feather Pillow to experience the same ultimate soft yet supportive sleep experience you had when you stayed at the Aria[®].

Specifications:

- Design: Medium Support Down Comfort Pillow
- Ideal for: All sleep positions
- Composition: 25 % White Goose Down / 75% White Goose Feathers
- Fabric: 235 Thread Count - 100% Downproof Cotton
- Double Stitching with German Cotton Piping

- CentroClean™ Feathers and Down
- Fill Weight: 28 ounces
- Preshrunk
- Care Instructions: Machine wash, dry, and fluff
- Hypoallergenic
- Size: 20" x 26"
- Price includes: 1 standard size pillow

(Emphasis added.)

26. This page also contains a disclaimer, which states:

The Aria® trademark is the exclusive property of MGM Resorts International®. Pacific Pillows does not own the Aria® trademark. Pacific Pillows makes absolutely no claim of ownership of the Aria® trademark. The Aria® trademark is used on the Pacific Pillows website simply to inform customers that the Down Etc.® 75/25 White Goose Pillows are the same pillows found in quite a few rooms at Aria®. The Down Etc.® 75/25 White Goose Down and Feather Pillows are exclusively manufactured by Down Etc.® and not by MGM Resorts International® or Pacific Pillows; however, many rooms in Aria® feature the Down Etc.® Fairfax Pillow and Down Etc.® 75/25 Feather/Down pillows offered by Pacific Pillows.

(Emphasis added.)

27. From this page the selected pillow or pillow set can be added to the consumer's shopping cart and purchased using a credit card.

28. Defendant's prominent use of Plaintiffs' ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE marks as the names of Defendant's products is likely to cause confusion or deception among consumers as to the source or origin of Defendant's products, as to an affiliation, connection or relationship between Plaintiffs and Defendant, or as to Plaintiffs' approval or sponsorship of Defendant's products or commercial activities.

29. Defendant's disclaimers regarding Plaintiffs' marks are insufficient to eliminate or reduce the likelihood of confusion and may exacerbate the potential confusion.

30. Defendant's use of Plaintiffs' ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE marks as the names of Defendant's products does not constitute fair use.

31. Plaintiffs have not, either individually or collectively, consented to or otherwise authorized Defendant's use of the Plaintiffs' marks.

32. Defendant has used Plaintiffs' marks with the intent to cause, confusion, mistake, and to deceive the consuming public and trade off of the goodwill and reputation of Plaintiffs.

COUNT I

(Trademark Counterfeiting under
the Lanham Act, 15 U.S.C. § 1114(a))

33. Plaintiffs incorporate each of the foregoing allegations.

34. Defendant used a counterfeit of Plaintiffs' ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE marks to advertise, promote, and sell pillows in a manner that is likely to cause confusion or mistake or in a manner that is likely to deceive consumers.

35. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs have each suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

COUNT II

(Trademark Infringement under
the Lanham Act, 15 U.S.C. § 1114(a))

36. Plaintiffs incorporate each of the foregoing allegations.

37. Defendant's unauthorized use of the ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE marks to advertise, promote, and sell pillows constitutes a reproduction, copying, or colorable imitation of Plaintiffs' federally registered trademarks in a manner that is likely to cause confusion or mistake or in a manner that is likely to deceive consumers.

38. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs have each suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

COUNT III

(Unfair Competition under
the Lanham Act, 15 U.S.C. § 1125(a)(1))

39. Plaintiffs incorporate each of the foregoing allegations.

40. Defendant's unauthorized use of the ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE marks to advertise, promote, and sell pillows is likely to cause confusion, or to cause mistake, or deceive as to an affiliation, connection, or association between Defendant and Plaintiffs, or as to the origin, sponsorship, or approval of Defendant or Defendant's goods, services, or commercial activities by Plaintiffs.

41. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs have each suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

COUNT IV

(False advertising under
the Lanham Act, 15 U.S.C. § 1125(a)(2))

42. Plaintiffs incorporate each of the foregoing allegations.

43. Defendant has used, in interstate commerce, false or misleading descriptions of fact, or false or misleading representations of fact, which, in Defendant's commercial advertising or promotion of Defendant's pillows, misrepresents the nature, characteristics, qualities, or geographic origin of Defendant's pillows.

44. More specifically, Defendant has falsely represented and/or misleadingly represented in interstate commerce including, without limitation, on the <www.pacifipillows.com> website, that: (a) Defendant sells the “exact same pillows” that are used by Plaintiffs in their resort hotel casinos; (b) Defendant’s pillows are of the same composition as pillows used by Plaintiffs in their resort hotel casinos; and (c) Defendant or Defendant’s supplier is the source of pillows used by Plaintiffs in Plaintiffs’ world famous resort hotel casinos.

45. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs have each suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

COUNT V

(Common law trademark infringement)

46. Plaintiffs incorporate each of the foregoing allegations.

47. Defendant's unauthorized use of the ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE marks to advertise, promote, and sell pillows constitutes a reproduction, copying, counterfeiting, and colorable imitation of Plaintiffs' trademarks in a manner that is likely to cause confusion or mistake or in a manner that is likely to deceive consumers.

48. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs have each suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

COUNT VI

(Common law unfair competition)

49. Plaintiffs incorporate each of the foregoing allegations.

50. Defendant's unauthorized use of the ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE marks to advertise, promote, and sell pillows constitutes unfair competition.

51. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs have each suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. An order temporarily, preliminarily, and permanently restraining and enjoining Defendant and its respective members, officers, agents, servants, employees, and/or all other persons acting in concert or participation with Defendant, from: (1) using the ARIA, BELLAGIO, MANDALAY BAY, MGM GRAND, and MIRAGE marks or any confusingly similar variations thereof, alone or in combination with any other letters, words, letter string, phrases or designs in commerce (including, but not limited to, on websites, in domain names, in social network user names, in hidden website text, or in metatags); and (2) engaging in false or misleading advertising or commercial activities likely to deceive consumers into believing that Defendant is any of the Plaintiffs or that Defendant or Defendant's goods are associated or affiliated with, connected to, or approved or sponsored by any of the Plaintiffs;

B. An order requiring Defendant to deliver up or destroy all pillows that it is advertising or marketing under the Plaintiffs' trademarks;

C. An award of statutory damages for counterfeiting of \$200,000 per counterfeit mark, or, if the Court finds that the use of the counterfeit marks was willful, damages of \$2,000,000 per

1 counterfeit mark, for a total of \$10,000,000;

2 D. An award of all compensatory, consequential, treble, exemplary, and/or punitive
3 damages to Plaintiff in an amount to be determined at trial;

4 E. An award of the costs incurred by Plaintiffs in prosecuting this action;

5 F. An award of Plaintiffs' reasonable attorneys' fees based on a finding that this is an
6 exceptional case under the Lanham Act; and

7 G. An award of all other and further relief to which Plaintiffs are entitled at law or in
8 equity.

9 **JURY DEMAND**

10 Plaintiffs hereby demand trial by jury on all issues so triable.

11 Dated: this 6th day of August, 2013.

12 LEWIS AND ROCA LLP

13
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